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SUPREME COURT, U.S.

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Supreme Court of the United States

No. 609—October Term, 1961

NEW YORK MOBILE HOMES ASSOCIATION, and EMPIRE STATE HOUSE TRAILER OWNERS ASSOCIATION, and WALTER B. MANHARD, suing on behalf of themselves and all other persons, firms or corporations similarly situated,

Appellants,

against

THOMAS B. STECKEL, as Supervisor of the Town of Chili, Monroe County, New York; CHARLES MASON, WARD RODER and RAY SICKLES, as Tax Assessors of the Town of Chili, Monroe County, New York; and CORNELIUS OUWELEEN, as Town Clerk of the Town of Chili, Monroe County, New York,

Appellees.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS

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Come now the appellees above named and move to dismiss the appeal taken to this Court by Notice of Appeal dated June 14, 1961 and amended July 13, 1961 on the ground that it does not present a substantial federal question.

Statement of the Case

The action, commenced on October 1, 1954, is one for judgment to declare unconstitutional New York Laws of 1954, ch. 726 providing the method for assessment of land

on which are located forms of housing adaptable to motivation, commonly referred to as mobile homes or trailers.

The Court of Appeals of the State of New York, the State's highest court, unanimously upheld the constitutionality of the statute (9 N. Y. 2d 533 [April 27, 1961]). In doing so, it affirmed the Appellate Division of the Supreme Court of the State of New York, Fourth Department (11 A. D. 2d 751 [1960]), which had unanimously affirmed the declaration of constitutionality made by the State Supreme Court after a trial without a jury. The Appellate Division had held that since the action was for declaratory judgment, the complaint should not have been dismissed, but instead judgment should have been the declaration of constitutionality. The Appellate Division also had held that the individual plaintiff in the case had standing to sue. The trial Court had held that he had not. Thus, the Appellate Division judgment and order was a modification of the judgment and order of the trial Court. The opinion of the trial Court is reported in 12 Misc. 2d 761 (1958). The cause had first been argued on the pleadings in the state Supreme Court and decided in favor of plaintiffs. The opinion is reported in 208 Misc. 308 (1955). The Appellate Division reversed upon the ground that the Supreme Court decision was insufficient for failure to comply with New York Civil Practice Act § 440. It directed that there be a "trial where the issues may be determined or a properly stipulated statement of facts upon which a decision should be made in conformity with section 440". This decision of the Appellate Division is reported in 3 A. D. 2d 643 (1956).

Thereafter the trial above referred to took place, resulting in the order and judgment declaring the statute in all respects constitutional, which, as to the constitutionality

of the statute, the Appellate Division and then the Court of Appeals of New York unanimously affirmed.

The Statute Involved

New York Laws of 1954, ch. 726, added to § 2 of the state's Tax Law—the "Definitions" section—a new subdivision 6-a, which, with certain exceptions, included trailers in the definition of the terms "land", "real estate" and "real property" as used in the Tax Law, and made them assessable to the owners of the real property on which they are located. The language of the subdivision was:

> "6-a. a. In addition to their meaning as provided in subdivision six, the terms 'land,' 'real estate,' and 'real property,' as used in this chapter, include all the forms of housing which are adaptable to motivation by a power connected thereto or which may be propelled by a power within themselves and which are or can be used as a house or living abode or habitation of one or more persons, or for business, commercial or office purposes, either temporarily or permanently, and commonly called and hereafter referred to as 'trailers' • • •."

Specifically excepted from this subdivision were the following:

> "(1) transient trailers which have been located within the boundaries of a tax district for less than sixty days and
>
> (2) trailers which are for sale and which are not occupied."

Paragraph b of the subdivision provided that

> "Trailers shall be assessed to the owners of the real property on which they are located."

Following the decision of the trial Court, and prior to the argument and decision of the case in the Appellate Division, and therefore necessarily before the argument and decision of the case in the Court of Appeals, there had been enacted, and become effective, a new Real Property Tax Law in which were incorporated most of the provisions theretofore in the state's Tax Law, Village Law, Education Law and other miscellaneous statutes, relating to the assessment and taxation of real property. "Substantive change" of such provisions was not intended (Memorandum of Advisory Committee to Board of Equalization and Assessment appended to bill which became Real Property Tax Law, p. xxi, McKinney's Consolidated Laws of New York, Book 49A, Real Property Tax Law; L. 1958, ch. 959, p. 2123 note).

The provision which replaced Tax Law, § 2, subd. 6-a, is § 102, subd. 12, paragraph g. It provides:

> "(g) Forms of housing adaptable to motivation by a power connected thereto, commonly called 'trailers' or 'mobile homes', which are or can be used for residential, business, commercial or office purposes, except those (1) located within the boundaries of an assessing unit for less than sixty days or (2) unoccupied and for sale. The value of any trailer or mobile home shall be included in the assessment of the land on which it is located; provided, however, that if either the trailer or mobile home or the land on which it is located is entitled to any exemption pursuant to article four of this chapter, such trailer or mobile home shall be separately assessed in the name of the owner thereof;".

Section 1602(5) of the new Real Property Tax Law, entitled "Saving clause", declares that it was intended by the repeal and re-enactment of certain provisions of the Tax Law enumerated therein, including the repeal of sec-

tion 2, subdivision 6-a of the Tax Law, re-enacted in § 102(12) of the Real Property Tax Law

> "* * * to effectuate a continuation and restatement, without change in substance or effect, of the provisions of such laws and the classification of any property as real property or personal property, as the case may be, shall not be broadened, increased, discontinued, diminished, affected or impaired by reason of such re-enactment."

The New York courts so read the statute (9 N. Y. 2d, at p. 537). Appellants had not raised any issue either in the Appellate Division or Court of Appeals by reason of the 1958 re-enactment of the 1954 statute upon which the action had been started.

ARGUMENT

The constitutionality of the statute here involved rests on clear and established grounds so that there is no substantial question under the Constitution of the United States warranting this Court taking jurisdiction.

Only if the case presents a substantial question arising under the Constitution of the United States would jurisdiction exist under United States Code, Title 28, § 1257. (Rule 16, [1, 6] of this Court.)

Appellants in their Jurisdictional Statement (pp. 5-6) declare that the "language" of the statute violates the due process clause of the Constitution. They do not go beyond this assertion. They do not indicate in what respect they contend there is a failure of due process, or what "language" in the statute they contend violates the Fourteenth Amendment. It would appear that it was necessary for appellants to at least endeavor to so specify,

and that they cannot expect this Court to take jurisdiction on the basis of their general assertion.

The highest Court of the State in its opinion, carefully considering this enactment in the field of tax legislation, found the statute not to be violative of the Constitution. The Court found (1) that the Legislature had the power to classify trailers as real property for purposes of taxation (9 N. Y. 2d, at p. 538); (2) that there was a rational basis for the classification (p. 539); (3) that the statute is not unconstitutional by reason of the fact that the aggregate tax assessed against the land is computed by reference to the value of the property of more than one owner (p. 540); (4) that a contention of possible inequities in application of the law were not ground for holding it unconstitutional; (5) that, moreover, the record of the trial did not disclose that any inequities had occurred; and (6) that there was ample relief available if in a particular situation an assessment were improper (pp. 540-541).

It is submitted that there is not a substantial federal question in this case warranting a hearing by this Court.

CONCLUSION

The motion to dismiss should be granted.

Dated: February 8, 1962.

Respectfully submitted,

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